

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-vs-

NOTICE OF MOTION
#08-CR-6087-CJS

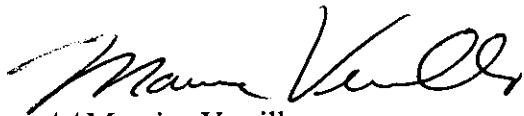
YEHIA ALI AHMED ALOMARI,
SALED MOHAMED TAHER SAEED,
AND MOHAMED AL HURAIBI,

Defendants.

PLEASE TAKE NOTICE, that upon the declaration of Maurice J. Verrillo, Esq., attorney for the defendant Mohamed Al. Huraibi, and upon all the prior papers and proceedings in this case, the undersigned will move this Court before the Hon. Charles J. Siragusa, on the 10th day of August, 2009 at 9 a.m. or as soon thereafter as counsel can be heard for an order precluding the admission of foreign bank records offered by the Government as their admission violates the defendants' constitutional rights under the Sixth Amendment, Crawford, and the Right of Confrontation, that the proposed records are not admissible under any exception to the hearsay rule, that the proof presented fails to satisfy the trustworthiness and veracity requirements of the law, and for such other and further relief as may be just and proper, including a full testimonial hearing before the Court.

Dated: August 10, 2009

Yours etc.,



/s/ Maurice Verrillo

LAW OFFICES OF MAURICE J.
VERRILLO, P.C.

Attorney for the Defendant
Mohamed Al Huraibi
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

ATTORNEY DECLARATION

MOHAMED AL HURAIBI ET AL.

Maurice J. Verrillo, declares, pursuant to 28 U.S.C. Section 1746(2) that::

1. I am the attorney for the defendant Mohamed Al Huraibi.
2. I execute this declaration in support of the defendant's motion to preclude the Government's motion to admit certain foreign records, without testimony from bank officials during this trial as to their trustworthiness and veracity.
3. The defendant Mohamed Al Huraibi objects to the admission of these records for the reasons offered by the co-defendants in their motions, and further for the following reasons:
 - a. It appears that the Government will offer these records by way of a certification or the use of testimonial affidavits. This offer is problematic due to the fact that the defendants were never given the opportunity to examine the attesting official(s) as a part of this procedure. These offers of testimonial statements violate Crawford, the Right of Confrontation, and the Sixth Amendment.

- b. The Government has failed to give a suitable explanation why the procedure associated with this certification was not approved by the Court prior to trial, and moreover why these witnesses are "unavailable" despite the fact that they have had a number of months to secure their testimony prior to the trial.

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c. The proffered records raise many foundational questions as to chain of custody, the procedures used by banks in the transmittal of funds, and other relevant matters. It should be noted that there appear to be intermediary banks involved in the alleged transfers from the Rochester area banks, whose records do not appear to be a part of the Government's application for admission of foreign records.

d. It is the Government's burden to go forward with their proof on these records. The ultimate issue of trustworthiness and veracity of the records necessitates that testimonial evidence be offered before this Court where counsel for the defendants would be able to question the necessary bank officials. Inconvenience is not a sufficient reason to deny the defendant's their common law and constitutional right to confront the evidence presented against them.

WHEREFORE, the defendant Mohamed Al Huraibi respectfully requests that his motion to preclude the foreign bank evidence be granted in its entirety.

Affirmed under the penalties of perjury.

Dated: August 10, 2009



/s/ Maurice Verrillo
MAURICE J. VERRILLO

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